

If you need assistance completing this application (general inquiries only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2<sup>nd</sup> Floor (One Texas Center).

ROW

CASE # C15-2014-0055  
# \_\_\_\_\_

**CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
GENERAL VARIANCE/PARKING VARIANCE**

**WARNING: Filing of this appeal stops all affected construction activity.**

**PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED  
INFORMATION COMPLETED.**

STREET ADDRESS: 902 West Live Oak Austin, Texas 78704

LEGAL DESCRIPTION: Subdivision – Bouldin

Lot(s) 8 Block 9 Outlot \_\_\_\_\_ Division Travis County

I/We Bouldin Green, LLC on behalf of myself/ourselves as authorized agent for

\_\_\_\_\_ affirm that on \_\_\_\_\_, \_\_\_\_\_,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below)

\_\_\_\_ ERECT \_\_\_\_ ATTACH x COMPLETE \_\_\_\_ REMODEL \_\_\_\_ MAINTAIN

The applicant is requesting the following variances to Section 25-2-492 (D) to:  
decrease the minimum side yard setback requirement from 5 feet to 3 feet;  
and increase the maximum impervious coverage limit from 45% to 49.7%; and  
increase the maximum building coverage limit from 40% to 41% ; and  
decrease the minimum lot width from 50 feet to 41 feet; and  
decrease the minimum lot size from 5,750 square feet to 5,179 square feet

in a SF-3 district.

(zoning district)

**NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.**

## VARIANCE APPLICATION NARRATIVE

Disputed area in pink

Blue outline of structures on 904 Liveoak lot

SOUTH EXTENSION OF BOULDIN ADDITION VOLUME 1 PAGE 94

SF 2-NP

Two dwelling units with carport between

Outlines of structures since demolished

New foundation

Property Line

Old fence line

LOT 8 BLOCK 9  
5,819 Square Feet  
(145' 4")

West Liveoak Street

Bouldin Ave.

906 W LIVE OAK ST

904 W LIVE OAK ST

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Applicant's lot by adverse possession (the "Disputed Area"). The new foundation was formed to be located partially in the Disputed Area.

Having just purchased the lot, Applicant had no knowledge of any claim to adverse possession or of historical facts that might support a claim of adverse possession. Applicant requested that the adjoining owner provide evidence of a right to ownership of the Disputed Area by adverse possession but no response was provided. No exception regarding adverse possession was made in the conveyance of the lot to Applicant. Applicant has no knowledge that the Central Appraisal District has ever excluded for tax purposes the Disputed Area from Applicant's lot. Rather, TCAD's description of both Applicant's property and the adjoining owner's property is by reference to the existing platted lots. Both the Seller of the lot to Applicant and Applicant have paid property taxes when due. Nor do the plat records reveal any effort by the adjoining owner to re-subdivide his lot to include the Disputed Area. Applicant has not investigated whether the improvements on the adjoining property, which extend much further toward both the street in front and alley in the back than the improvements being constructed by Applicant, are in compliance with current front and rear setback requirements and applicable use restrictions. It is believed to be likely that not only the existing plat of the adjoining property but also the improvements located thereon pre-date current regulations by many years.

Decrepit fencing had been cleared from the lot in connection with construction activities. Applicant now understands that the Disputed Area is claimed to extend to the location of that fencing. In order not to further delay the construction of the home, for which financing had already been obtained, Applicant adjusted the design of the proposed home so that the structure was not in the Disputed Area. The completed foundation now extends to within 3.5 feet of the Disputed Area (see drawing). No structures are located in either the Disputed Area or in the setback area of the adjoining property measured from the actual lot line.

After the foundation was completed, the adjoining owner filed suit against Applicant, in which the adjoining owner not only claims the Disputed Area, but further claims to have a right to enforce building setback lines against Applicant, measured from what the adjoining owner contends is the new boundary as a result of his claim for adverse possession of the Disputed Area.

Applicant is proceeding with the construction of the home under the terms of the building permit issued to Applicant. The adjoining owner apparently desires to interfere with any construction on Applicant's lot, seeking a judgment that Applicant must tear down the partially completed home because it is in what the adjoining owner claims is a new setback. Applicant cannot timely obtain relief in the litigation to ensure that Applicant can proceed with the use of Applicant's property.

The variances requested are contingent because the adjoining owner's claim to adverse possession has not been established, and may not ever be established. Applicant requests the following variances in the event that the adjoining owner establishes a right to ownership of the Disputed Area to allow continued construction of the home for which a building permit has already been issued: Variances to Section 25-2-492 (D) to:

- decrease the minimum side yard setback requirement from 5 feet to 3 feet; and

- increase the maximum impervious coverage limit from 45% to 49.7%; and

- increase the maximum building coverage limit from 40% to 41%; and

- decrease the minimum lot width from 50 feet to 41 feet; and

- decrease the minimum lot size from 5,750 square feet to 5,179 square feet

Applicant requests a right to build within what would constitute a greater setback from the lot line than would otherwise be required. Because setbacks of existing

improvements were established according to the actual lot lines, there would be no crowding of improvements.

Applicant requests a reasonable use of its property: To continue with the construction of the home for which a building permit was obtained in good faith, modified to be even further away from the adjoining property than provided in the pending permit.

The character of the area will not be affected, as the area was developed in accordance with the lot lines. The adjoining property owner will not be impaired - there is a greater distance between improvements than would be required pursuant to regularly applicable setback regulations.

The hardship experience by Applicant is unique - it is caused by the adjoining property owner's aggressive and unreasonable effort to require the destruction of improvements already built, and possibly to prevent any development on Applicant's lot.

The purposes of the setback regulations will not be impaired - existing improvements were located in accordance with the original lot lines, so that the relief requested will result in a greater distance between improvements that otherwise required.